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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,753	02/01/2006	Colin Brown	102790-203 (30093 US)	1630
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NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER CONLEY, SEAN EVERETT	
			ART UNIT	PAPER NUMBER
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			02/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/561,753	Applicant(s) BROWN ET AL.	
	Examiner SEAN E. CONLEY	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,6,8,10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 5, 6, 8, 10 and 12-14 is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed December 20, 2007 has been received and considered for examination. Claims 5-6, 8, 10 and 12-14 are pending.

Claim Objections

2. Claim 12 is objected to because of the following informalities: The status identifier for claim 12 is incorrect. Claim 12 is labeled as "new" but should be labeled as "currently amended". Also, claim 12 depends from canceled claim 11. For examination purposes, claim 12 will be treated as though it depends from claim 13. Furthermore, currently amended claim 12 begins with "The An apparatus" which is unclear. It appears that the Applicant mean to delete the word "An" but inadvertently duplicated the word in line 1 of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 8, 10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Pons Pons (U.S. Patent No. 4,425,302).

Regarding claim 13, Pons Pons discloses an apparatus adapted to transmit an active substance in the vapor phase to an atmosphere. The apparatus comprises an active substance incorporated in a sublimable carrier substance (bar (2)) and a heating element (heating resistance (11)) which has a subliming effect on only part of the total sublimable carrier substance. Pons Pons further discloses that the carrier substance (bar (2)) and heating element (heating resistance (11)) are arranged such that the sublimable carrier substance subliming at that part of the sublimable carrier substance affected by the heating element is replaced by further sublimable carrier substance (see figure 1; see col. 1, line 63 to col. 2, line 66). When the apparatus is plugged into a horizontal electrical outlet in a vertical wall the heating element is arranged in a horizontal direction with the sublimable carrier (bar (2)) being disposed on a substantially horizontal surface of the heating element (11) so that a subliming effect on only part of the total sublimable carrier substance takes place.

Regarding claim 8, Pons Pons discloses an apparatus wherein the carrier substance (bar (2)) rests on a substantially horizontal surface which is a horizontal surface of the heating element (heating resistance (11)) (see figure 1). This arrangement occurs when the apparatus is plugged into a horizontal electrical outlet on a vertical wall with the heating element arranged below the carrier substance.

Regarding claims 10 and 12, Pons Pons discloses that the carrier substance (bar (2)) is part of a replaceable refill (see col. 1, lines 58-63; see col. 2, lines 61-67).

Regarding claim 14, Pons Pons discloses a method of transmitting an active substance (fragrance or insecticide) in the vapor phase into an atmosphere by

incorporating the active substance into a sublimable carrier substance ((siblimable bar (2)) and heating the carrier substance by means of a heating element (heating resistance (11)) with which it has contact (see col. 1, line 63 to col. 2, line 66). The carrier substance (bar (2)) is arranged with respect to the heating element (11) (the carrier substance being located directly next to the heating element) such that carrier substance that sublimates at the contact between heating element and carrier substance is replaced by further carrier substance (see figure 1). When the apparatus is plugged into a conventional horizontal electrical outlet in a vertical wall the heating element is arranged in a substantially horizontal direction. The heating element arranged below the carrier substance enables the sublimable carrier substance (bar (2)) to sublime at the contact between the carrier substance and the heating element and the carrier substance is replaced by further carrier substance (see figures 1-2).

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 5, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al. (U.S. Patent No. 5,647,052) in view of Pons Pons.

Regarding claims 5 and 13, Patel et al. disclose an apparatus adapted to transmit an active substance in the vapor phase to an atmosphere, comprising an active substance incorporated in a carrier substance (48) and a heating element (bulb (44))

which includes a substantially horizontal surface (top surface of bulb (44) shown in figures 4-5) which heats the carrier substance (48). The carrier substance (48) and heating element (bulb (44)) are capable of being arranged such that the sublimable carrier substance subliming at that part of the sublimable carrier substance affected by the horizontal surface of the heating element is replaced by further sublimable carrier substance (see figures 4-5; see col. 4, line 27 to col. 6, line 35). In addition, the carrier substance (48) forms part of a replaceable refill that includes tray (47) (see figures 4-5; see col. 5, lines 20-26). However, Patel et al. fails to explicitly disclose that the carrier substance is a sublimable carrier substance.

Pons Pons discloses an apparatus adapted to transmit an active substance such as a deodorant or an insecticide in the vapor phase to an atmosphere. The apparatus comprises an active substance (deodorant, perfume, insecticide) incorporated in a sublimable carrier substance (bar (2)) and a heating element (heating resistance (11)) which has a subliming effect on only part of the total sublimable carrier substance (see figure 1; see col. 1, line 63 to col. 2, line 66; see abstract). This reference has been relied upon to teach that it is well known to utilize a sublimable carrier substance in an air treatment device which electrically plugs into a conventional wall outlet and contains an electrical heater which heats the carrier substance to release a perfume or insecticide from the carrier substance into the surrounding environment.

Therefore, because both Patel et al. and Pons Pons each disclose an apparatus for dispensing a substance such as perfume or insecticide from a device that plugs into a wall outlet and utilizes heat to disperse the substance, it would have been obvious to

one of ordinary skill in the art to substitute the volatile substance (48) of Patel et al. with the sublimable carrier substance (bar (2)) containing the perfume or insecticide of Pons Pons to yield the predictable result of dispensing a perfume or insecticide into the surrounding environment to treat the air.

Regarding claim 8, Patel et al. disclose that the carrier substance (48) rests on a substantially horizontal surface (50) which is heated by the heating element (bulb (44)) (see figure 5; see col. 5, line 58 to col. 6, line 15).

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al. in view of Pons Pons as applied to claim 13 above, and further in view of Spector (U.S. Patent No. 4,574,181).

The combination of Patel et al. in view of Pons Pons disclose that the carrier substance (48) is contained within a tray (47) that is mounted within a support body (41) wherein the tray is completely sealed except for a vent opening at one end to dispense the volatile substance to the atmosphere. The sealing of the bottom end of the tray (47) is accomplished by a surface that is substantially horizontal and is in intimate, heat-conducting contact with the electrical heating element (bulb (44)). The support body (41) comprises suitable electrical wiring and connections (45) for the supply of heating electricity to the bulb (44) (see figures 4-5; see col. 4, line 27 to col. 6, line 35). However, Patel et al. fail to disclose that tray (47) is tubular in shape or an opening at the lower end of the tray (47).

Spector discloses a tubular shaped apparatus for dispensing an aroma into the atmosphere. The apparatus comprises a duct (23) that receives a tubular fragrance cartridge (24) containing a tubular shaped impregnated porous material. The cartridge (24) is housed near heater (16) so that the heat will release the fragrance into the atmosphere (see col. 4, lines 30-40; see figures 4-5; see col. 1, lines 5-13).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the shape of the tray (47) of Patel et al. or the shape of the apparatus of Patel et al. to any suitable or desired shape including tubular as exemplified by the aromatic dispenser of Spector, since it has been held that a change in shape is a matter of design choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape of the claimed apparatus was significant.

Furthermore, it would have been obvious to modify the location of the opening in the tray (47) and the outlet vent opening in the apparatus of Patel et al. such that the openings correspond with each other and permit release of the active substance from the apparatus in a desired direction. It has been held that the modification of the location of parts such as the location of the openings in the tray and the dispensing apparatus is an obvious matter of design choice (see MPEP 2144.04).

Response to Arguments

Claim rejections - 35 U.S.C. 112

8. The rejections of claims 4 and 9 under 35 U.S.C. 112, second paragraph are withdrawn since these claims are canceled by amendment.

Claim rejections - 35 U.S.C. 102(b) and 35 U.S.C. 103(a)

9. Applicant's arguments with respect of the rejections of the claims under 35 U.S.C. 102(b) and 103(a) have been considered but are moot in view of the new ground(s) of rejection.

With respect to the prior art reference of Pons Pons, the Applicant argues that “the sublimable bar will never be resting on a substantially horizontal surface, as the bar will sit vertically as will the heating element”. The Examiner respectfully disagrees. As exemplified by figures 2 and 3 of U.S. Patent No. 4,714,984 to Spector it is well known that wall outlets may be orientated both vertically and horizontally (see figures 2-3; see col. 3, line 67 to col. 4, line 11). Thus, if the apparatus of Pons Pons were to be plugged into the horizontal wall outlet of Spector the sublimable bar will sit on a horizontal surface of the heating element. Therefore, the apparatus of Pons Pons is capable of functioning as claimed by the applicant and anticipates the claimed structure of new independent claim 13 as well as the process of new independent claim 14.

With respect to the prior art reference of Patel et al., the Applicant argues that Patel fails to explicitly disclose any material that is “sublime” or that is “sublimable”. This argument is persuasive. However, Pons Pons has been relied upon to teach that it

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is well known to incorporate a sublimable carrier substance into the plug-in type air treatment device of Patel et al. therefore claims 5, 8 and 13 are obvious over Patel et al. in vie of Pons Pons as set forth above. The Applicant further argues that the fragrance source of Patel et al. is not in contact with the heating element. This argument is not persuasive because the fragrance source (48) is in fluid (heat) contact with the heating element (see figure 5; see col. 3, line 57 to col. 4, line 10). The claims do not require the substance to be in direct contact with the heat source.

Furthermore, the device of Patel et al. and the device of Pons Pons are both intended to be connected to electrical outlets. It is well known that electrical outlets are located in a number of different arrangements in conventional houses and buildings. Wall outlets may be horizontally situated, vertically situated, located on a side wall, located on top of a kitchen counter, located on the floor etc. Therefore, both the references of Pons Pons and Patel et al. disclose heaters that are substantially horizontal with a carrier substance disposed on top of the horizontal surface of the heater when plugged into the appropriate electrical outlet. Thus, the term "horizontal" in the claims is related to an intended use of the device. Any item that can be rotated with respect to the earth's horizon can be labeled horizontal.

The prior art invention of Spector has been again relied upon in the above rejection of claim 6 to exemplify an alternate shape of the apparatus.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

//William H. Beisner//
Primary Examiner, Art Unit 1797

Sean E. Conley

February 11, 2008